

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

LARRY KIRKWOOD,

Plaintiff,

v.

K. RAMIREZ,

Defendant.

Case No.: 1:23-cv-0314 JLT SKO (PC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO DISMISS
CERTAIN CLAIMS AND DEFENDANTS**

(Doc. 11)

Larry Kirkwood seeks to hold the defendants liable for civil rights violations pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

The magistrate judge screened the complaint pursuant to 28 U.S.C. § 1915A(a) and found Plaintiff stated a cognizable claim against Defendant K. Ramirez for failure to protect under the Eighth Amendment. (Doc. 8 at 4-8.) However, the magistrate judge found Plaintiff did not state cognizable claims for violations of his rights arising under the First and Fourteenth Amendments. (*Id.* at 8-14.) The magistrate judge also determined Plaintiff did not state a claim against Warden Brian Phillips. (*See id.* at 5-14.) The Court granted Plaintiff an opportunity to amend his complaint or to proceed on the claim found cognizable. (*Id.* at 15.) In response, Plaintiff indicated that he “wish[ed] to proceed only on the 8th Amendment claim and all other claims be dismissed.” (Doc. 9 at 1.) He also consented to the dismissal of defendants other than Ramirez.

(*Id.*)

On November 13, 2023, the magistrate judge issued Findings and Recommendations, and recommended the action proceed only on the claim found cognizable, with all other claims and defendant Phillips dismissed. (Doc. 11.) The Findings and Recommendations were served on Plaintiff, and contained a notice that any objections were due within 14 days. (*Id.* at 2.) Plaintiff was also informed the “[f]ailure to file objections within the specified time may result in waiver of rights on appeal.” (*Id.*, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014); *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991).) To date, no objections have been filed.

According to 28 U.S.C. § 636(b)(1)(C), this Court performed a de novo review of this case. Having carefully reviewed the matter, the Court concludes the Findings and Recommendations are supported by the record and proper analysis. Thus, the Court **ORDERS**:

1. The Findings and Recommendations issued on November 13, 2023 (Doc. 11) are **ADOPTED** in full.
2. This action **SHALL** proceed only on Plaintiff’s Eighth Amendment failure to protect claim against Defendant Ramirez.
3. The remaining claims in Plaintiff’s complaint are **DISMISSED**;
4. Warden Brian Phillips is **DISMISSED** from this action.
5. The matter is referred to the magistrate judge for further proceedings.

IT IS SO ORDERED.

Dated: **December 1, 2023**


UNITED STATES DISTRICT JUDGE